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10 Attorneys for Plaintiffs
11 LENSCRAFTERS, INC. and EYEXAM OF
12 CALIFORNIA, INC.

13 IN THE UNITED STATES DISTRICT COURT

14 NORTHERN DISTRICT OF CALIFORNIA

15 LENSCRAFTERS, INC. and EYEXAM OF
16 CALIFORNIA, INC.,

17 Plaintiffs,

18 v.
19 LIBERTY MUTUAL FIRE INSURANCE
20 COMPANY; EXECUTIVE RISK SPECIALTY
21 INSURANCE COMPANY; UNITED STATES
22 FIRE INSURANCE COMPANY; MARKEL
23 AMERICAN INSURANCE COMPANY and
24 WESTCHESTER FIRE INSURANCE COMPANY,

25 Defendants,

26 AND RELATED COUNTER- AND CROSS-
27 CLAIMS.

28 Case No.: C-07-2853 SBA

**DECLARATION OF CELIA M.
JACKSON IN SUPPORT OF
PLAINTIFFS' MOTION TO DISMISS
WITHOUT PREJUDICE CLAIMS
AGAINST LIBERTY MUTUAL FIRE
INSURANCE COMPANY,
EXECUTIVE RISK SPECIALTY
INSURANCE COMPANY AND
WESTCHESTER FIRE INSURANCE
COMPANY**

Date: April 8, 2008

Time: 1:00 p.m.

Courtroom: 3

The Hon. Saundra Brown Armstrong

1 I, Celia M. Jackson, declare:

2 1. I am an attorney in the law firm of Heller Ehrman LLP, counsel of record for
 3 Plaintiffs LensCrafters, Inc. and EYEXAM of California, Inc. (together, "LensCrafters") in this
 4 action. I have personal knowledge of the matters stated in this declaration, and if I were asked to
 5 testify regarding these matters, I could competently do so.

6 2. This lawsuit involves a dispute between LensCrafters and defendant insurers
 7 regarding indemnity coverage for a class action lawsuit entitled *Melvin Gene Snow, et al. v.*
 8 *LensCrafters, Inc., et al.*, San Francisco Superior Court Case No. CGC-02-40554 ("Snow"). The
 9 *Snow* action has been pending for nearly six years. After a year of intensive negotiations, however,
 10 including multiple mediation sessions with the Hon. Edward A. Infante (Ret.) and the Hon. Ronald
 11 M. Sabraw (Ret.), the parties in *Snow* were able to achieve a settlement. The settlement agreement
 12 covers a class of more than one million consumers and will provide a combination of cash and
 13 discount vouchers to class members.

14 3. The parties presented the *Snow* settlement to the Hon. Richard A Kramer, who is
 15 presiding over the *Snow* case, on February 4, 2008. On that date, the court granted preliminary
 16 approval of the *Snow* settlement. The final approval hearing is scheduled for July 11, 2008.

17 4. As part of the settlement negotiations with the *Snow* plaintiffs, LensCrafters reached
 18 settlement agreements with three of its insurers: Liberty Mutual Fire Insurance Company,
 19 Executive Risk Specialty Insurance Company and Westchester Fire Insurance Company. These
 20 insurers consented to the *Snow* settlement and each insurer agreed to provide funding for the
 21 settlement. Liberty and ERSIC's contributions have exhausted their policy limits. Defendants
 22 Markel American Insurance Company and United States Fire Insurance Company refused to
 23 participate in the settlement.

24 5. The settlement agreements between LensCrafters and the settling insurers contain
 25 mutual releases. LensCrafters has also agreed to file dismissals without prejudice of its claims
 26 against these insurers immediately upon preliminary approval of the *Snow* settlement. These
 27 dismissals will become with prejudice if and when the *Snow* settlement receives final approval.

28 6. On February 15, 2008, I circulated a draft of a stipulation to dismiss LensCrafters'

1 claims against Liberty, ERSIC and Westchester to all defendants. After negotiations over the
2 language of the stipulation, all defendants other than Markel agreed within a few days to execute
3 the stipulation. Since then, I have made several attempts by telephone and email to obtain Markel's
4 consent to the stipulation, but Markel has not provided it. On February 20, 2008, I telephoned Chip
5 Cox, Markel's counsel, to discuss the stipulation, but he was not in his office. I then sent him an
6 email requesting Markel's consent. On February 21, Mr. Cox responded by email and informed me
7 that he "hope[d]" to have his client's consent to sign the stipulation by February 22. On February
8 22, I sent Mr. Cox an email stating that I needed Markel's consent no later than February 25. As of
9 the date of this filing, I have received no response to this email.

10 I declare under penalty of perjury that the foregoing is true and correct.

11 Executed this 26th day of February 2008 in San Francisco, California.

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/s/ Celia M. Jackson

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Celia M. Jackson

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